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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR. JUSTICE R. V. RAVEENDRAN

HOUSE RENT REVISION PETITION NO.431/1998

BETWEEN:

Hukumichand Sardarmal Devada,
major, s/o Devada,
r/o No.637/A, Kalmath road,
Belgaum.

.. Petitioner

(By Sri.V.Balakrishna, Adv.)

AND:

Krishnaji Raju Pisani,
major, r/o Hangirage,
Belgaum Dist.

.. Respondent

(By Sri.G.Balakrishna Shastri, Adv.)

This petition is filed u/s 115 of CPC against the order dtd.10-2-98 passed in HRC RP No.108/97 on the file of the I Addl.Dist.Judge, Belgaum dismissing the revision petition and confirming the order passed in HRC No.163/93 dtd.29-10-97 passed by the I Addl.Civil Judge(Jr.Dn) Belgaum allowing the petition filed u/s 21(1)(1) & (o) of KRC Act.

This petition coming on for admission this day, the Court made the following:

..ORDER..

O R D E R

This is a tenant's petition under Section 115 of C.P.C. The respondent who is ~~the~~ landlord filed H.R.C.No.204/85 for eviction of the tenant on the file of III Additional Munsiff, Belgaum under Proviso (h) to Section 21(1) of the Karnataka Rent Control Act, 1961 ('Act' for short) . That petition was allowed by order dated 9-8-1991. During the pendency of the said proceedings, the landlord had filed an application under Section 29 of the Act and in that context, the Court had passed an order dated 5-2-1990 holding that there was relationship of landlord and tenant between the respondent herein and the petitioner herein. That order became final as the tenant did not challenge the same.

2. The tenant filed H.R.C. R.P. No.100/91 against the final order dated 9-8-1991 in H.R.C. No.204/85. The revision petition was allowed by the revisional Court by order dated 12-2-1992

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on the ground that landlord had not made out bonafides in regard to the claim for eviction. The revisional Court however noticed that the question relating to relationship of landlord and tenant between the parties had already been decided and the decision had become final and that the tenant's Counsel did not dispute the said position. Thus the matter was decided on merits of the claim, after confirming that the finding on the question of relationship of landlord and tenant between parties had already been decided and became final. Feeling aggrieved by the dismissal of the eviction petition by the revisional Court, the landlord filed H.R.R.P.No.1658/1992 and it is stated that the said petition is pending before this Court.

3. During the pendency of H.R.R.P.No.1658/1992 the landlord filed another petitioner for eviction in H.R.C.No.163/1993 under proviso (a) & (o) to Section 21(1) of the Act on the ground that the petitioner had committed default in paying the rents and on the ground that the premises had not been used without reasonable cause for the purpose for which it was let for a continuous period

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of six months immediately preceding the filing of the said petition. That petition was allowed by the trial Court by order dated 29-10-1997 on appreciation of evidence, holding that the landlord had made out a case under Proviso (a) & (o) to Section 21(1) of the Act. Feeling aggrieved, the tenant filed HRC RP No.108/1997. The Revisional Court rejected the revision petition confirming the findings of fact that the landlord had made out a case of eviction under proviso (a) & (o). Feeling aggrieved, tenant has filed this second revision petition under Section 115 of C.P.C.

4. Petitioner contends that during the pendency of the revision petition filed by the landlord in this Court in H.R.R.P. No. 1658/1992, arising from the earlier eviction petition in HRC No.204/1985, the landlord could not have filed a second eviction petition. Therefore, the trial Court and Revisional Court ought to have rejected the second eviction petition filed under Proviso (a) & (o) to Section 21(1) of the Act.

5. The earlier petition in HRC No.204/1985 was filed under Proviso (h). The present petition is filed

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under Provisos (a) & (o). The cause of action for the present petition is different from the cause of action for the earlier petition. Mere pendency of a Revision Petition by the landlord against the decision in the earlier petition filed under proviso (h), will not prevent him from filing a fresh eviction petition, if a fresh and different cause of action accrues. Hence the contention that pendency of the revision petition in HRRP No.1658/1992 relating to the first petition is a bar to the second eviction petition (present petition) is liable to be rejected.

6. The tenant next contends that there is a finding in HRC.RP .No.100/1991 that there is no relationship of landlord and tenant between the respondent herein and revision petitioner and that in view of the said finding, the landlord could not have filed the second petition in HRC No.163/1993.

7. The records of HRRP No.1658/1992 are placed along with this petition. They clearly disclose that in HRC No.204/1985 there was an order dated 5-2-1990 holding that jural relationship between the respondent herein and the petitioner herein is

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that, ^{of} landlord and tenant; and that decision having become final by reason of the tenant not challenging the same, the question no longer remains open for consideration. Further in the order passed in HRC RP No.100/91 filed by petitioner, the Revisional Court had noticed the finding given on the question of jural relationship and had proceeded on the basis that the said question was concluded and did not arise for consideration. HRC.RP.100/1991 filed by petitioner herein was allowed on merits and not on the ground that there was no jural relationship of landlord and tenant.

8. Therefore the contention that there was a finding that there was no jural relationship of landlord and tenant between the respondent herein and petitioner herein is contrary to the facts. The said contention is rejected.

9. The petitioner has not urged any other grounds in the revision petition. Learned counsel for the petitioner however attempted to contend that the findings that the tenant was in arrears and that the tenant was liable to be evicted under Proviso (a) is not tenable. He has not been able to make out any error in the decision or findings, requiring correction under Section 115 of C.P.C. The findings

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that the tenant had committed default in paying rents and had not used the premises for the purpose for which it was let, for the prescribed period, and therefore the tenant was liable to be evicted under Proviso (a) & (o) have been reached on the material placed and such finding has been affirmed by the revisional Court. There is no ground for interference. This revision petition is therefore rejected with costs throughout.

10. At this stage, learned counsel for the petitioner sought time to vacate the premises. Sri Balakrishna Shastry, learned Counsel for the respondent vehemently opposes grant of any time. But, ultimately he agreed for grant of six months time. Hence six months time is granted subject to the petitioner filing an affidavit undertaking to vacate the premises within six months and further undertaking to pay the rents regularly and not to induct anyone else into the premises. The petitioner shall file such an undertaking within four weeks after furnishing a copy of the counsel for the respondent.

Sd/-
JUDGE

sp/ujk